

DUNCAN MILLER

IBLA 77-189, 77-237, 77-261

Decided June 8, 1977

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, requiring additional rent prior to issuance of noncompetitive oil and gas leases and rejecting one lease offer in part. NM-13261, NM-29431 (Okla.), NM-29809.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Rentals -- Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate applies to all leases issued after that date, regardless of the date the offer to lease or drawing entry card was filed.

2. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

These appeals from decisions of the New Mexico State Office, Bureau of Land Management (BLM), requiring increased oil and gas lease rental payments have been consolidated for the sake of efficiency. Appellant Duncan Miller protests action of the BLM requiring him to pay advance rental at a rate of \$1 per acre or fraction thereof for noncompetitive lease offers NM 13261 and NM 29431 (Okla.). Appellant also protests the decision of the New Mexico State Office rejecting his lease offer NM 13261 with respect to Lots 1, 2, 3, 4, 5, E 1/2 NE 1/4, NE 1/4 SE 1/4 (E 1/2) Sec. 10; W 1/2 W 1/2 Sec. 11, T. 15 N., R. 3 W., NMPM, which lands have been set aside by BLM as "special use areas" exempt from oil and gas leasing activity.

Lease offer NM 13261 was submitted over-the-counter by appellant on February 5, 1971. Lease offer NM 29431 was given first priority in a simultaneous oil and gas lease drawing held by the New Mexico State Office on November 22, 1976; offer NM 29809 received first priority in a drawing held February 8, 1977. No lease was issued, however, prior to February 1, 1977, at which time the rental rate for noncompetitive oil and gas leases was increased from 50 cents per acre to \$1 per acre, by amendment to 43 CFR 3103.3-2, 43 F.R. 1032 (January 5, 1977). When informed of the rate increase, appellant protested and filed this appeal.

Appellant argues generally that he requested issuance of the leases prior to the effective date of the increase, that the rate increase is unfair, that the increase could drain funds from drilling efforts, and that equitable considerations demand that offers filed prior to February 1, 1977, be accepted at the old rental rate. We cannot agree.

[1] The exact issue raised by appellant was addressed by this Board in Raymond N. Joeckel, 29 IBLA 170 (1977) where we held that:

[T]he Secretary, in exercising his general powers over the public lands as guardian of the people, Knight v. United States Land Assoc., 142 U.S. 161 (1891), has discharged his duty to see that the public interest is served by exacting a fair return on behalf of the government from persons engaged in exploiting the oil and gas resources of the public domain. The imposition of an increase in the per acre rental from 50 cents to \$1 as a condition to issuance of a noncompetitive oil and gas lease after February 1, 1977, is within the authority of the Secretary. Further, the filing of an oil and gas lease offer prior to the promulgation of the regulation increasing the rental did not vest in applicant any

vested right protected by the Fifth Amendment which would preclude subjecting him to the operation of the amended regulation. See, e.g., Udall v. Tallman, 380 U.S. 1, 4 (1965); McDade v. Morton, 494 F.2d 1156 (D.C. Cir. 1974).

Joeckel, *supra*, p. 173. Appellant, therefore, was properly required to pay the increased rental. See also Doris N. Sterkel, 30 IBLA 39 (1977); Raymond N. Joeckel, 30 IBLA 32 (1977); Milton J. Lebsack, 29 IBLA 316 (1977), holding that rental for noncompetitive oil and gas leases issued after February 1, 1977, must be paid according to the increased rate, without regard to when the drawing entry card or offer was submitted to BLM.

[2] Appellant's second protest, which concerns the rejection of a portion of his lease offer due to the classification of portions of the requested lands as "special use areas," is also without merit. Appellant states that the rejection of his offer with respect to these parcels, "[I]s very unfair because * * * the land is many miles off the road where hardly anyone would look at the natural appearance of the landscape * * *." Appellant also asserts, without elaboration, that "there are oil and gas wells in other places which are much more critical, from the standpoint of the natural appearance of the landscape."

As we have frequently held, the Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. E.g., Cartridge Syndicate, 25 IBLA 57 (1976); T. R. Young, Jr., 20 IBLA 333 (1975). We note, moreover, that this is not a case involving the rejection of an oil and gas lease offer without an independent determination by BLM of whether or not the public interest would be served by the issuance of the lease. See e.g., Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976). The Bureau, in the case before us, has independently determined that certain lands within the Cabezon Planning Unit Special Use Area should not be utilized for any purpose which would disrupt the natural appearances of the landscape. These lands are described by Albuquerque District Management Framework Plan as having high recreational potential and as being well suited to the production of motion pictures. We find no flaw in this determination and, indeed, the remote character of the lands for which appellant applied may be exactly the characteristic which makes them well suited for the above-described special uses. The decision rejecting Miller's oil and gas lease offer is, therefore, within the discretion of the Secretary.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

